



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha15020124

[REDACTED]
Complainant,

v.

AVI FOOD SYSTEMS INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission,") pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On February 19, 2015 [REDACTED] ("Complainant") filed a Complaint with the Commission against AVI Food Systems Inc. ("Respondent") alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*). Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent terminated Complainant because of her disability. In order to prevail, Complainant must show that: (1) she has a disability as defined under the applicable laws; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees without disabilities were treated more favorably under similar circumstances. There is sufficient evidence to believe that Complainant has a disability as alleged and that she was subjected to an adverse employment action when Respondent terminated her employment on or about November 7, 2014. There is also sufficient evidence to show that Complainant was meeting Respondent's legitimate business expectations and that Respondent treated similarly-situated employees without disabilities more favorably under similar circumstances.

By way of background, Respondent hired Complainant as a cashier in March 2014. At all times relevant to the Complaint, Complainant had a medical condition that impaired her ability to stoop, bend, twist, or lift items in excess of ten pounds. Complainant alleges that Respondent was aware of her limitations and agreed to accommodate her restrictions; nonetheless, during the course of her tenure with Respondent, she was transferred to the position of dishwasher where she was



required to lift heavy pans weighing in excess of 20 pounds. While Complainant asserts that she alerted Respondent of her inability to lift such weight and refused to perform such tasks because of her disability, she asserts that Respondent failed to comply with her work restrictions. Complainant also asserts that she requested action from Human Resources but to no avail. Ultimately, Respondent terminated her employment instead of permitting her to continue with her accommodation or otherwise engaging in the interactive dialogue process.

Despite being given an opportunity to refute Complainant's assertions, Respondent failed to do so. Specifically, the Commission sent requests for information on or about March 30, 2015, April 10, 2015, and September 11, 2015 to no avail. Moreover, the Commission sent Respondent a subpoena requesting a response by October 7, 2015; however, Respondent failed to participate in the instant proceeding. As Complainant asserts sufficient facts to believe that a discriminatory practice occurred as alleged and Respondent failed to refute Complainant's assertions, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910-IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 13, 2015
Date

Akia A. Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission